



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute codes MNDC OLC FF

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the "Act") for:

- a monetary order for compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67;
- an order requiring the landlord to comply with the Act, regulation or tenancy agreement pursuant to section 62;
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

The hearing was conducted by conference call. The landlord did not attend this hearing, although I waited until 10:00 a.m. in order to enable the landlord to connect with this teleconference hearing scheduled for 9:00 a.m. The tenant attended the hearing and was given a full opportunity to be heard, to present evidence and to make submissions.

The tenant testified that on June 4, 2016, he sent a copy of the Application for Dispute Resolution, Notice of Hearing and Evidence Package to the landlord by registered mail. A registered mail tracking number was provided in support of service and it confirms that the package was received by the landlord. The registered mail was sent to an address obtained by the tenant through a Title Search conducted through the Land Title Office. The tenant testified that the address for service provided by the landlord on the tenancy agreement was the address for the rental unit in dispute and the landlord did not reside at this address and the landlord refused the tenants requests to provide an alternate address for service.

Based on the above evidence, I am satisfied that the landlord was served with the Application for Dispute Resolution and Notice of Dispute Resolution Hearing pursuant to sections 89 & 90 of the Act. The hearing proceeded in the absence of the landlord.

The tenant confirmed that the tenancy ended by way of mutual agreement on June 12, 2016 so the tenant's request for an order requiring the landlord to comply with the Act, regulation or tenancy agreement was withdrawn.

Issues

Is the tenant entitled to a monetary order for damage or loss?

Is the tenant entitled to recover the filing fee for this application from the landlord?

Background & Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the tenant, not all the details of the submissions and/or arguments are reproduced here.

The rental unit is a four bedroom detached duplex. The tenants occupied one half of the duplex and the other half of the duplex was occupied by other tenants of the same landlord. The tenancy began on July 1, 2015 with a monthly rent of \$1500.00 payable on the 1st day of each month. The tenant paid a security deposit of \$750.00 at the start of the tenancy which was returned in full on June 13, 2016 after the tenants vacated the rental unit.

The tenant's claim is for a total of \$2500.00 for the breach of quiet enjoyment which he has broken down in his application as \$500.00 for moving fees, \$1500.00 for having to find another place right away and \$500.00 for loss of time.

The tenant claims he had no choice but to move out of the rental unit after receiving threats from the neighboring tenants. The tenant submits the landlord took no action after his repeated attempts to notify the landlord of the threats and other problems with the neighboring tenants.

In support of his claim, the tenant provided picture evidence of garbage which he claims was left throughout the outside of the rental unit by the neighboring tenants; a signed copy of a Mutual Agreement to End Tenancy dated June 1, 2016; and text message correspondence between the tenant and the landlord .

Analysis

Pursuant to section 28 of the Act, a tenant is entitled to quiet enjoyment of the rental unit including but not limited to rights to the following:

- reasonable privacy;
- freedom from unreasonable disturbance;
- exclusive possession of the rental unit, subject to the landlord's rights contained in section 29; and

- use of common areas for reasonable and lawful purposes, free from significant interference.

Residential Tenancy Policy Guideline #6 "Entitlement to Quiet Enjoyment" provides the following guidance:

In order to prove a breach of the entitlement to quiet enjoyment, the tenant must show that there has been substantial interference with the ordinary and lawful enjoyment of the rental premises. This includes situations in which the landlord has directly caused the interference or was aware of the interference but failed to take reasonable steps to correct it. It is also necessary to balance the tenant's right to quiet enjoyment with the landlord's right and responsibility to maintain the premises. Temporary discomfort or inconvenience does not constitute a basis for a breach under this section. In determining the amount by which the value of the tenancy has been reduced, consideration will be given to the seriousness of the situation or the degree to which the tenant has been unable to use the premises, and the length of time over which the situation existed.

Text messages exchanged between the tenant and the landlord on October 26, 2015, March 9, 2016 and May 31, 2016 support the tenant's claim that they notified the landlord after receiving threats from the neighboring tenants. There is no evidence that the landlord did anything in response to the tenants requests to intervene other state that he had spoken to the neighboring tenants and asked them not to communicate directly with the tenants.

I find that the landlord was made aware of the constant threats the tenants received from the neighboring tenants and failed to take reasonable steps to correct the situation. The landlord failed to participate in the hearing or provide any evidence of steps taken to investigate or remedy the situation. I find the tenant's right to quiet enjoyment has been breached.

Pursuant to section 67 of the *Act*, when a party makes a claim for damage or loss, the burden of proof lies with the applicant to establish the claim on a balance of probabilities. To prove a loss, the applicant must satisfy the following four elements:

1. Proof that the damage or loss exists;
2. Proof that the damage or loss occurred due to the actions or neglect of the other party in violation of the *Act*, *Regulation* or tenancy agreement;
3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
4. Proof that the applicant followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed.

In the case at hand, I find the tenant has suffered a loss by having to vacate the rental unit and that the loss occurred due to the neglect of the landlord in dealing with the reports of threats from neighboring tenants. The tenant has provided little evidence to support the actual amount required to compensate for the claimed loss other than his testimony that he had to take twelve days of time off work to find a new place. The tenant did not submit any evidence to support the claimed loss of income due to time taken off work. The tenant also testified that he did not have to hire movers or rent a moving truck as he did the move himself with his own truck. The tenant did not provide any breakdown of the hours or travel distance required to complete the move. I find an award of \$500.00 to be reasonable compensation for the tenant's loss of any time and mileage costs associated with the move.

Is the tenant entitled to recover the filing fee for this application from the landlord?

As the tenant was successful in this application, I find that the tenant is entitled to recover the \$100.00 filing fee paid for this application from the landlord for a total monetary award of \$600.00.

Conclusion

Pursuant to section 67 of the *Act*, I grant the tenant a Monetary Order in the amount of \$600.00. Should the landlord fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: July 11, 2016

Residential Tenancy Branch